

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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RCT:kmg:rs

August 1, 2003

Beatta Kalies:

This is the redraft of the Wisconsin Rural Finance Authority (WRFA) draft.

This redraft treats numerous current law provisions that refer to authorities. I have tried to model the treatment of this authority on the treatment of similar current authorities, but the draft should be reviewed to ensure that the policy choices represented by the treatments are consistent with the intent of the request. Also, by not exempting WRFA from certain statutes, requirements in those statutes apply to WRFA. In particular, please consider the following:

1. This draft adds WRFA to the definition of "agency" in s. 13.62 (2) for the purposes of the law regulating lobbying.
2. The draft, by amending s. 13.94 (4) (a) 1., makes WRFA subject to audit by the Legislative Audit Bureau and, by amending s. 13.95 (intro.), gives the Legislative Fiscal Bureau access to the authority's records.
3. The draft makes WRFA subject to s. 16.41, which requires agencies and authorities to provide financial information to the Department of Administration.
4. The draft makes WRFA subject to s. 16.417 relating to dual employment.
5. Including WRFA in the definition in s. 16.70 (2) means that it is not generally subject to the state purchasing laws.
6. Under this draft, the open records law applies to WRFA because it is not exempted under s. 19.32 (1).
7. Under this draft, the code of ethics for public officials and employees covers WRFA because it is not exempted under s. 19.42 (5) and because of proposed s. 19.42 (10) (q).
8. This draft includes WRFA in the definition of "state agency" in s. 40.02 (54) (j), which causes employees of WRFA to be considered state employees for the purposes of state retirement benefits and health insurance coverage.
9. Current law requires state agencies, the Wisconsin Health and Educational Facilities Authority (WHEFA), and the Wisconsin Housing and Economic Development Authority (WHEDA) to notify the Department of Commerce when they

make loans or grants to companies. The law also requires a company to notify the entity that provided the loan and the Department of Commerce of any position related to the project for which the grant or loan is received that will be filled within one year after the receipt of the grant or loan. This draft also applies this law to WRFA.

10. This draft provides that the state's insurance laws do not apply to loan guarantees made by WRFA. (*See* proposed s. 600.01 (1) (b) 7m.) Current law provides that the insurance laws do not apply to loan guarantees made by WHEDA and WHEFA.

There are also some current statutes that refer to one or more of the existing authorities to which I did not add references to WRFA in this draft. In some cases, this means that a statute will apply to WRFA because it is not exempted from coverage. Please consider whether the new authority should be added to any of the following statutes:

1. Section 11.36, relating to political solicitation involving public officials and employees, which, of the current authorities, currently covers only the University of Wisconsin Hospital and Clinics Authority (UWHCA).
2. Section 13.40 (3) (b), which creates an exception from the limitation on state expenditures from general purpose revenue for appropriations to honor certain moral obligations such as the moral obligation recognized in s. 234.93 (6) to make an appropriation to meet all demands for funds guaranteed by WHEDA's development reserve fund. There is a similar expression of moral obligation in proposed s. 238.58 (6).
3. Section 16.004 (12) (a), which exempts UWHCA and the Fox River Navigational System Authority (FRNSA), but not the other authorities, from rules promulgated by the Department of Administration governing surveillance of employees.
4. Section 16.15 (1) (ab), which exempts UWHCA, but not the other authorities from recycling requirements.
5. Sections 16.72 (2) (e) and (f) and 16.75 (8) and (9), which impose requirements on the authorities other than UWHCA relating to purchasing products made from recycled materials and products that are recyclable.
6. Section 16.75 (1m), which requires state agencies and authorities other than UWHCA to use life-cycle cost estimates in purchasing.
7. Section 16.765, which requires state agencies and some of the current authorities to include nondiscrimination requirements in contracts.
8. Section 24.61 (2) (a), which authorizes the Board of Commissioners of Public Lands to invest the trust funds that it manages in bonds issued by UWHCA, but not by the other authorities.
9. Section 25.17 (3) (b), which authorizes the State Investment Board to invest funds over which it has investment authority in bonds issued by UWHCA, but not by the other authorities.
10. Section 66.0603 (1m), which authorizes local governments to invest in bonds issued by UWHCA, but not by the other authorities.

11. Section 77.54 (9a) (a), which excludes sales to UWHCA and FRNSA, but not the other authorities, from the sales tax.

12. Section 103.49 (1) (f), which includes UWHCA and FRNSA under the state's prevailing wage law.

13. Section 219.09 (1), which authorizes banks and other financial institutions and fiduciaries to invest in bonds issued by UWHCA but not by the other authorities.

I added WRFA to s. 560.032 (1), relating to allocation of the federal volume cap on private activity bonds, because WHEDA and WHEFA are included in that statute. I am not certain, however, that it is necessary to add it. I assume that there is someone knowledgeable about this statute at the Department of Commerce. Please let me know if you want me to contact that department about this issue.

I have added a delayed effective date of 12 months for the provisions that sunset the WHEDA agricultural programs so that those programs can continue to operate while the new authority gets organized. Please let me know if you want a delay of a different length or do not want any delay.

The rest of this drafter's note is in response to your redraft instructions.

I have added provisions to make interest on WRFA bonds tax exempt.

I added language like s. 237.11. (*See* proposed s. 238.05.)

You indicated that a definition of "livestock" is unnecessary and that an existing statutory definition can be used. Did you want to refer to a specific existing definition of "livestock"? If not, it will be up to the authority to determine what animals are included in the term "livestock."

As you recently instructed me, this draft does not change the amount of loans that WHEDA may guarantee or the amount of bonds that it may issue.

You asked that a purpose statement be added to the relating clause and to the draft in general. The relating clause is a description of the subject matter of a bill, not of its purpose. (*See* Joint Rule 52 (1).) The relating clause may not be written to promote a bill, but I have tried to make it more complete. Similarly, purpose statements are ordinarily not included in statutes themselves for a number of reasons, including to avoid redundancy to, or conflict with, provisions that are intended to have legal effect, to avoid use of undefined terms, and to avoid the inclusion of promotional language in the statutes that may be subject to later misinterpretation by agencies or courts.

Rob Marchant has drafted language in response to your request to authorize additional WRFA programs. (*See* proposed s. 238.65.) I have added a section requiring the authority to use resources of other state agencies and requiring other state agencies to provide assistance to WRFA. (*See* proposed s. 238.06.)

I changed the makeup of the board and its terms and provided that the executive director is appointed by the Secretary of Agriculture, Trade and Consumer Protection. The draft now authorizes WRFA to accept gifts and grants and requires the report about forms to be filed on July 1.

You asked that the definition of “agricultural commodity” be expanded to include byproducts or further processes. Because a byproduct is not a commodity, I approached this a little differently. The definition of the term “agricultural commodity” only applies in proposed s. 238.36, which provides for agricultural cooperative stock loans. I added “byproducts” to proposed s. 238.36 (1) (a) and (b). I do not think that it is necessary to add “further processes” because any amount of processing would be covered by the current language. If you feel that this is inadequate, perhaps we can discuss examples of what you are concerned about.

I added partnerships to the definition of “eligible borrower” in proposed s. 238.30 (1) (d). Do you want to provide eligibility only to certain kinds of partnerships or to allow any kind of partnership to be eligible? If the former, please let me know. Your redraft instructions indicated that the draft should use a different definition of “family farm corporation” than the one in s. 102.07 (5) (c). I could not find a definition of that term in the Internal Revenue Code, so I deleted the cross-reference and did not substitute a new one. This would enable the authority to define the term. If you would prefer, we could develop another definition. If you wish to pursue this matter, it might help me to understand what the concern is with the definition in s. 102.07 (5) (c). The fact that this definition is located in ch. 102 is not in itself legally relevant to its use in this draft, but if you have no objection to the content of the definition, I could repeat it in the new chapter instead of cross-referencing it.

For the requested change related to participation in loans, please see the last sentence of proposed s. 238.30 (3).

The redraft instructions requested that proposed s. 238.30 (5) (b) and (c) be changed to refer to the “agricultural producer price index” rather than the “consumer price index.” I was unable to find any references to “agricultural producer price index” in USDA publications on the Internet. USDA does produce the “index of prices paid for commodities and services, interest, taxes, and farm wage rates,” sometimes referred to as the “index of prices paid by farmers.” This redraft refers to the “index of prices paid by farmers.” If I have missed something or if you would prefer a reference to a different index, such as the farm production, goods, and services index, please let me know.

I made the requested changes in the dollar amounts related to loan guarantee programs.

You asked whether the draft allows for revenue bonds as well as general obligation bonds. As I understand it, the term “general obligation bonds” is used to refer to bonds backed by a governmental body’s taxing power. Because authorities do not have taxing power, they do not issue general obligation bonds in the usual sense. However, the draft does authorize WRFA to pledge its full faith and credit to the payment of its bonds. The draft also authorizes WRFA to pledge some or all of the revenues that it will receive as security for particular issues of its bonds. I believe that the draft gives flexibility to the authority, like the flexibility given to the other authorities that issue bonds, to issue bonds that are similar to revenue bonds that the state issues and those that are similar to general obligation bonds that the state issues. Please let me know if you have additional questions about this issue.

You ask whether this draft includes the CROP program. The draft includes all of the agricultural programs that WHEDA currently runs. The statutes do not call any of the WHEDA programs “CROP,” but I believe that that is the name commonly given to the Agricultural Production Loan Guarantee Program.

The reference to harvesting whitefish from Lake Superior that was in the preliminary draft came from current s. 234.907 (2), which is why it was included in the preliminary version of this draft. I have eliminated this language from the redraft.

Please let me know if you have any questions or wish to make any changes in this draft.

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